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HIGH COURT OF JUDICATURE AT BILASPUR : CHHATTISGARH

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO. 2777 OF 2006

PETITIONER	:	Haji Mohammed Farooque, Mutwalli, Anjuman Islamia committee, North Bastar, Kanker, aged 49 years, son of Haji Shakoor, R/o Shitlapara, Kanker, District Kanker [C.G.].
		Versus
RESPONDENTS	1.	Chhattisgarh State Waqf Board, Sector-3, C-12, Devendra Nagar, Raipur [C.G.]
	2.	Chair person, Chhattisgarh State Waqf Board, Sector-3, C-12, Devendra Nagar, Raipur [C.G.]
	3.	Chief Executive Officer, Chhattisgarh State Waqf Board, Sector-3, C-12, Devendra Nagar, Raipur [C.G.]
	4.	Collector, Kanker.
	5.	Assistant Waqf Commissioner, Chhattisgarh State Waqf Board, District Kanker [C.G.]
	6.	S.D.O., [Revenue] North Bastar, Kanker [C.G.].

Present : Smt. Fouzia Mirza, learned counsel for the petitioner.
Shri B.L. Dembra, learned counsel for respondent No.4.

(ORAL ORDER)
(Passed on 31st July, 2006)

In this writ petition, the order of the Chief Executive Officer, Chhattisgarh State Wakf Board, the 3rd respondent herein, marked as Annexture-P/5, dated 25.05.2006 removing the petitioner from the office of Mutawalli has been assailed, among other grounds, on the ground that the impugned order was passed by the 3rd respondent without conducting enquiry envisaged under Section 71 of the Wakf Act, 1995 (for short 'the

Act') read with sub-Section (3) of Section 64 of the Act. Section 64 of the Act deals with removal of Mutawalli. A Mutawalli can be removed from his office on the grounds stated in Clauses (a) to (k) of sub-Section (1) of Section 64 of the Act. Sub-Section (3) of Section 64 the Act mandates that no action shall be taken to remove a Mutawalli unless the Board or its delegate has held an enquiry into the matter in the prescribed manner and the decision has been taken by the majority of the not less than two-third of the members of the Board. Section 71 prescribes the procedure to be followed in conducting the enquiry. Sub-Section (2) of Section 71 provides that for the purpose of an enquiry under Section 71, the Board or any person authorised by it in that behalf, shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 for enforcing the attendance of witnesses and production of documents. In the present case, except issuing notice to the petitioner to explain his conduct with regard to certain irregularities, admittedly, no enquiry as envisaged under Section 71 of the Act has been held before the impugned order was passed removing the petitioner from the office of the Mutawalli. Since the impugned order was passed in violation of the mandatory provisions of sub-Section (3) of Section 64 of the Act, the same cannot be sustained in law. The writ petition is, therefore, allowed. The impugned order is quashed. No costs. However, this order shall not come in the way of the Board or the 3rd respondent taking appropriate steps against the petitioner in accordance with law.

Sd/-
Chief Justice